Litigation and enforcement in Kazakhstan: overview

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Country Q&A | Law stated as at 01-Feb-2020 | Kazakhstan

A Q&A guide to dispute resolution law in **Kazakhstan**.

The country-specific Q&A gives a structured overview of the key practical issues concerning dispute resolution in this jurisdiction, including court procedures; fees and funding; interim remedies (including attachment orders); disclosure; expert evidence; appeals; class actions; enforcement; cross-border issues; the use of ADR; and any reform proposals.

To compare answers across multiple jurisdictions visit the Litigation and enforcement *Country Q&A tool*.

This Q&A is part of the global guide to dispute resolution. For a full list of jurisdictional Q&As visit *global.practicallaw.com/dispute-guide*.

Main dispute resolution methods

1. What are the main dispute resolution methods used in your jurisdiction to resolve large commercial disputes?

The main dispute resolution method in **Kazakhstan** is litigation in the state courts.

The system is adversarial. Each party must present to the court and the other party the evidence substantiating its claims, objections and other arguments. The court litigation procedure is governed by the Civil Procedure Code of the Republic of **Kazakhstan** (CPC), and is managed and controlled by the court.

Arbitration is not as widespread as litigation, but has recently become more popular. Mediation is developing, but is not as popular as litigation and arbitration.

Online dispute resolution within the court system is not available in **Kazakhstan**. However, certain procedural actions can be performed online. For example, procedural documents can be submitted and obtained via the "Court Cabinet" web platform, court hearings are audio and video recorded, and parties to a court hearing can participate using videoconference services.

Court litigation

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The general limitation period is three years and normally starts running from the day when a claimant became or should have become aware of the violation of its rights. The general limitation period applies to most contractual, tort, land and other commercial claims. A court will only apply the limitation period on application from a party to a dispute.

Special limitation periods apply to certain categories of disputes, as follows:

- Claims against transporters arising out of the shipping of goods: one year from the date of the transporter's refusal to satisfy a claim or expiration of the period to respond to such claim.
- Creditor claims against guarantors: one year from the date the principal obligation becomes due, unless otherwise specified in the guarantee.
- Bank claims against borrowers relating to failure to comply with loan agreements: five years from the violation of the agreement.
- Claims challenging resolutions of a limited liability partnership's bodies adopted in violation of the law, charter or any other documents of the partnership: six months from the date of the resolution or from the date when the participant who did not partake in the meeting became aware of the resolution.
- Claims for invalidation of transactions effected under the influence of deceit, violence, threat, or as a consequence of malicious collusion of one party's representative with the other party: one year from the date of cessation of the violence or threat under which the transaction was effected, or from the date when the claimant became or should have become aware of other grounds for invalidation of the transaction.

Certain claims are not subject to a limitation period and can be filed for an unlimited period of time. These include:

- Negatory claims (that is, owners' claims to prohibit a violation of their rights to use and dispose of property).
- Depositors' claims for the release of bank deposits.
- Claims for the protection of non-tangible benefits and personal non-property rights.

Court structure

3. In which court are large commercial disputes usually brought? Are certain types of disputes allocated to particular divisions of this court?

Kazakhstan's judicial system comprises three levels of courts:

- First instance courts: district courts and inter-district courts.
- Courts of appellate instance: oblast courts, Nur-Sultan City Court and Almaty City Court.
- Court of cassation instance: Supreme Court (the highest judicial authority).

There are two types of first instance courts: general courts and specialised courts competent to review certain categories of disputes (for example, economic, administrative, juvenile courts, and so on). Most commercial disputes, including IP, competition, maritime disputes, are reviewed by the specialised inter-district economic courts. Employment disputes are reviewed by general courts.

Investment disputes involving a large investor (with investments exceeding about USD13.789 million or more at 1 January 2020) and subject to the rules of the first instance courts are reviewed by a specialised judicial board of the Supreme Court. Other investment disputes are reviewed by the Nur-Sultan City Court.

Kazakhstan has set up the Astana International Financial Centre (AIFC) with its own court that is not a part of **Kazakhstan's** judicial system. The AIFC Court has its own court of final appeal, its own procedural rules and a special fast-track procedure for small claims. Its decisions are subject to enforcement in **Kazakhstan** without the need to follow recognition procedures. All judges of the AIFC Court are currently foreign nationals.

The AIFC Court has exclusive jurisdiction in relation to:

- Disputes arising between the AIFC's participants, bodies, and/or their foreign employees.
- Disputes relating to operations carried out in the AIFC and regulated by the law of the AIFC.
- Disputes referred to the Court by agreement of the parties.
- The interpretation of the AIFC acts.

Other information about the AIFC is available at: http://aifc-court.kz.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

Advocates and legal advisers have rights of audience in civil cases, including large commercial disputes. Legal advisers must have higher legal education, at least two years' experience in the field of law and be members of the chamber of legal advisers. What distinguishes advocates and legal advisers is that licensed advocates have the right to participate in administrative and criminal proceedings.

Additionally, starting 1 January 2020, both advocates and legal advisers will have the obligation to take out liability insurance against property damage that may be caused to clients as a result of professional faults in the course of providing legal assistance.

A party can represent itself in court proceedings, including court hearings. A company can be represented in court by its chief executive officer, another employee of such company or the company controlling the represented company, under a power of attorney.

Foreign lawyers

Kazakhstan legislation does not contain any rules prohibiting foreign lawyers from representing parties in court. However, foreign lawyers will also need to meet the requirements applicable to legal advisers (*see above, Rights of audience/requirements*).

Foreign advocates can also conduct cases in courts under any relevant international agreement ratified by **Kazakhstan**.

Fees and funding

5. What legal fee structures can be used? Are fees fixed by law?

The legislation establishes the amount of legal fees only in respect of the state-guaranteed legal assistance (for example, in criminal cases where the participation of an advocate is mandatory). Fees are not fixed by law in large commercial claims. However, the law establishes the maximum legal fees that can be collected from the defeated party. In property claims, this amount cannot exceed 10% of the satisfied part of a claim.

Legal advisers can use any type of legal fee structures. In practice, the structures that are most commonly used are fixed and capped fees. Hourly rates are rarely used. Advocates cannot charge contingency fees, but this prohibition does not apply to legal advisers.

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

Each party bears its own litigation costs. At the end of the proceedings, the court will order the defeated party to pay the winning party's litigation costs. Third-party litigation funding is not commonly used in practice in **Kazakhstan**, although there is no prohibition against such funding.

Insurance

Kazakhstan legislation allows parties to take out insurance against litigation costs. However, this type of insurance is not customary in **Kazakhstan**.

Court proceedings

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Court proceedings are generally public. Judicial acts are published online (*http://office.sud.kz*), except those relating to cases examined behind closed doors.

Hearings may be closed to the public on a party's application if it is essential to ensure the protection of a commercial or any other secret protected by law. Additionally, hearings must be closed to the public if this is necessary to protect state secrets.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

Kazakhstan legislation imposes a mandatory pre-trial settlement procedure for certain categories of disputes (for example, claims for amendment and cancellation of contracts and claims against transporters). Mandatory pre-trial settlement may also be required by a contract.

Pre-trial settlement normally involves sending a reclamation or letter of complaint to the other party. A claimant can apply to court on receipt of the other party's refusal to satisfy the reclamation or on expiration of a certain period for providing a response.

A court will return or dismiss a claim if the claimant fails to comply with any applicable pre-trial settlement procedure. Currently, there are no penalties for failing to comply with pre-action conduct requirements. However, a court may recover litigation costs from the party who failed to comply with the pre-trial settlement procedure, regardless of the outcome of the case.

Main stages

9. What are the main stages of typical court proceedings?

Starting proceedings

A statement of claim must meet the requirements of the CPC, namely, it must include the names of the parties, details of the claim, its value and other information. The CPC also identifies the documents that must be attached to the statement of claim. The applicable state duty must be paid and confirmation of payment must be enclosed with the claim. A statement of claim can be submitted either in paper form or in electronic form (via the official system at: *http://office.sud.kz*).

If all formal requirements are met, a judge will issue a ruling accepting the claim and initiating a civil case within five business days of filing of the claim in court.

Notice to the defendant and defence

A claimant must attach copies of the statement of claim and other required documents for other persons participating in a case (defendant, third party, and so on). The court will send these to the defendant and other participants to the case within three business days of receipt of the claim.

The defendant must submit a statement of defence within ten business days of receiving the copy of the statement of claim.

Subsequent stages

The following subsequent stages apply after initiation of a case:

- Preparation of the case for proceedings.
- Preliminary hearing.
- Main hearing.

The case must be prepared for proceedings no later than 20 business days after initiating the case (this time limit can be extended in exceptional cases). At this stage, the court determines the actions to be taken to resolve the case. Namely, the court:

- Identifies the governing law.
- Calls for evidence on the parties' motions.
- Appoints experts and specialists.
- Notifies third parties not identified in the claim, if the dispute may affect their interests.

In a preliminary court hearing, the parties can file procedural requests and present evidence.

At the main hearing, the court considers the case on the merits, hears arguments of the parties, examines evidence, interrogates witnesses and experts, and issues and announces the judgment. A party can also present evidence at this stage, provided that it proves that it was impossible to present such evidence in the course of a preliminary court hearing. The main hearing must commence no later than two months from the date of preparation of the case for proceedings. The average time required to consider a commercial dispute in the first instance courts is about three months from the initiation of the case.

The parties can submit the statement of defence, applications and other procedural documents in paper form or in electronic form (via the official system at: *http://office.sud.kz*).

Interim remedies

10. What steps can a party take for a case to be dismissed before a full trial? On what grounds can such applications be brought? What is the applicable procedure?

The court can strike out a case in certain circumstances on a party's application or at its sole discretion, specifically if:

- The claimant abandons its claim.

- The parties have entered into an amicable agreement.
- The case is not subject to consideration by a state court (for example, there is an arbitration agreement between the parties and a defendant refers to the agreement).
- There is a court judgment or arbitral award in force that was issued in a dispute between the same parties, with respect to the same subject matter and on the same grounds.
- An organisation party to the case was liquidated and has no legal successors.

Additionally, the court can consider a case without a full trial by issuing a summary judgment or a default judgment.

In the event of summary judgment proceedings, the court considers a case without summoning the parties based on the submitted documents. This procedure is mainly available for claims relating to small amounts of money and rarely applies to major commercial disputes.

A default judgment is issued in the event of the defendant's failure to appear in court, unless the claimant opposes a default judgment. If a defendant does not appear in court two or more times, the case is normally considered "*in absentia*". The disadvantage of a default judgment is that it can be easily revoked on the defendant's application. To have a default judgment revoked, two conditions must be concurrently met:

- There must be a valid reason for the defendant's absence.
- The defendant must submit evidence that may have an influence on the judgment.

In practice, the courts almost always revoke default judgments on the defendant's application, even where the above conditions are not met.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

There are no provisions under which a court can order a claimant to provide security for the defendant's costs.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

Interim injunctions, such as attachment orders, mandatory or prohibitory injunctions, fall within the category of "provisional measures" under Chapter 15 of the CPC. Therefore, answers to *Question 12*, *Question 13* and *Question 14* contain information on provisional measures.

The court can take provisional measures on the claimant's application, if failure to take these measures may hinder the enforcement of a judgment or make it impossible.

Provisional measures can be taken at any time during the proceedings, starting from the initiation of a case up to the issuance of enforcement documents. When deciding on an application for provisional measures, the court does not examine the claim on the merits nor clarifies whether a claimant has any rights to disputed property.

The CPC provides for the following provisional measures:

- Arrest of money and/or other property of the defendant.
- Prohibition against certain defendant's actions.
- Prohibition on third parties from performing obligations owed to the defendant under the law or a contract (for example, prohibition from transferring disputed property to the defendant or registering rights over such property).
- Suspension of sale of property, if a claim for the release of that property is filed.
- Suspension of debt recovery based on a writ of execution that is disputed by the applicant.

This list is not exhaustive. The court can also take other measures depending on the merits of the dispute or order several measures at the same time.

Provisional measures must be proportionate to the claimant's claims and must not violate public or third-party interests. The Supreme Court of the Republic of **Kazakhstan** has also held that these measures must not lead to the defendant's bankruptcy or interruption of normal production activities.

The court can request the claimant to provide security for the defendant's potential losses caused by the provisional measures, through placing a certain amount on the deposit account of the authorised agency. However, the "authorised agency" is not designated by legislation, and the mechanism for implementing this provision has not yet been determined. Therefore, in practice, a defendant cannot obtain security for its potential losses. If the court rejects a claim, a defendant can file a claim against the claimant for compensation for losses caused by the provisional measures.

Prior notice/same-day

The court considers an application for provisional measures without notice to the defendant. If the application is submitted together with a claim, the court must consider it on the day of initiating a civil case. In other instances, a decision on the application for provisional measures will be made on the day it is accepted by the court.

Mandatory injunctions

As the list of provisional measures in the CPC is not exhaustive, provisional measures can require a person to do a positive act. For example, the court can order a defendant to transfer the disputed property to a third party until the dispute is resolved. However, prohibitory injunctions are more common in practice.

Right to vary or discharge order and appeals

A defendant can apply to vary (replace) or discharge (cancel) provisional measures at any time.

Additionally, the parties can appeal a court ruling on an application for provisional measures before a superior court. The term for bringing an appeal is ten business days from the date of the ruling in its final form or the date when a party becomes aware of such ruling. Filing an appeal with a superior court does not suspend the ruling on the provisional measures.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Arrests of money and/or other property of the defendant (similar to interim attachment orders) are available. This type of provisional measure is most often applied in commercial disputes involving the recovery of debts.

Availability and grounds

See *Question 12, Availability and grounds*.

Prior notice/same-day

See *Question 12, Question 12*.

Main proceedings

Arrests of the defendant's money and/or other property can be granted in support of foreign arbitral proceedings. **Kazakhstan** legislation does not set the procedural rules on the grant of provisional measures in support of foreign court litigation. The only exception is the procedure set out in the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases 2002 between Belarus, **Kazakhstan**, Armenia, Tajikistan and Kyrgystan.

Preferential right or lien

Attachment orders do not create any preferential right or lien in favour of the claimant over the seized assets.

Damages as a result

If the court rejects the claimant's claim on the merits, the defendant can file a claim against the claimant for damages suffered as a result of the attachment once the court judgment enters into force.

Security

The court can request that the claimant place a certain amount on the deposit account of the authorised agency as security for the defendant's potential losses caused by provisional measures (*CPC*). However, the "authorised agency" is not designated by legislation and the mechanism for implementing this provision has not yet been determined.

14. Are any other interim remedies commonly available and obtained?

The court can apply any other provisional measures not listed in the CPC, if failure to apply such measures may hinder the enforcement of a court judgment or make it impossible.

Final remedies

15. What remedies are available at the full trial stage? Are damages only compensatory or can they also be punitive?

Available remedies

The following remedies are available in civil law cases:

- Recognition of rights.
- Restoration of the position that existed before the violation of a right.
- Prohibition of acts violating a right or posing a threat of violation.
- Specific performance of an obligation.
- Compensation for losses.
- Forfeit or penalty.
- Invalidation of a voidable transaction and application of the consequences of such invalidity.
- Application of the consequences of invalidity of a void transaction.
- Termination or variation of legal relations.
- Invalidation of the act of a public authority or declaration that such an act cannot be enforced.

- Collection of a fine from a public authority or public official for violation of the rights of an individual or legal entity.

(*Article 9, Civil Code*.)

The above list is not exhaustive. Other remedies may be available depending on the nature of the violation and the claimant's claims.

Compensation for damages and penalties

Damages can be recovered for direct losses and lost profit. Damages must be proved by a claimant. Compensation for lost profit is more difficult to obtain than compensation for direct losses. The courts tend to reject part of these claims on the ground that the exact amount of lost profit was not proven.

In commercial disputes, the parties often provide for a forfeit (penalty) as a remedy. A forfeit can be specified by legislation or contract and is normally collected for failure to perform or improper performance of obligations. When claiming payment of a forfeit, the claimant need not prove the cause of losses. However, on the defendant's request, the court can reduce the amount of the forfeit if it considers that it is unreasonably high compared to the claimant's actual losses. When determining the amount of a forfeit, the court takes into account the extent to which the debtor performed its obligations.

Evidence

Document disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Each party must disclose to the court and the other party the evidence substantiating its claims, objections and other arguments. The court does not generally collect evidence on its own initiative. However, on a party's request, the court can assist that party in obtaining evidence.

The parties normally submit original written documents. A court may also accept copies of written documents, unless the other party challenges their content.

Electronic documents must be certified by the electronic digital signature of the person submitting them with a mark "copy of an electronic document" and data on the results of the procedure for verification of the electronic digital signature. The content of electronic correspondence or a website can be certified by a notary. However, a notary can only examine evidence before the initiation of a case in court. On a party's request, the court can examine the content of a website or emails directly during a court hearing using a computer or a tablet.

A party is not obligated to disclose documents that are helpful for its opponent. However, a court can request the submission of such documents on the other party's application.

Evidence can be submitted when preparing the case for proceedings or during the preliminary hearing. A party can also submit evidence during the main hearing if it can prove that it was impossible to submit such evidence during the previous stages.

Failure to provide evidence without good reasons may lead to the following consequences:

- The party at fault may be liable for contempt of court and may be ordered to pay a fine.
- Regardless of the case outcome, the court can order that all litigation costs be borne by the party at fault if the failure resulted in delay or hindered the issuance of a legal and well-grounded judgment.
- The party who failed to submit evidence to a first instance court is barred from presenting such evidence before the appellate court. However, the appellate court may accept the evidence if it considers that it could not be submitted to the first instance court for valid reasons (for example, if the first instance court dismissed the party's application to submit evidence).

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

Kazakhstan legislation does not recognise the concept of "privileged documents". Certain documents are protected if they contain secrets protected by law (for example, state secrets and information protected by banking secrecy). The parties cannot request each other or witnesses to disclose documents containing any secret protected by law. However, a court can request the submission of such documents on a party's application, in which case the court normally examines the documents behind closed doors.

An advocate cannot be ordered to submit documents containing information relating to the provision of legal assistance to his or her clients (*Law on Advocacy and Legal Assistance*). This prohibition does not apply to legal advisers. However, both advocates and legal advisers (internal and external legal advisers) cannot be interrogated as witnesses on circumstances that came to their knowledge in the performance of their duties as a party's representative.

Kazakhstan legislation does not expressly provide for the without prejudice principle, but contains similar provisions. For example, the Mediation Law prohibits mediation participants from disclosing information that came to their knowledge in the course of mediation without the written consent of the party that provided such information. Additionally, if the parties attempted to settle the dispute by way of judicial mediation but failed to reach

an agreement, the case will be considered in accordance with the general procedure by another judge. In this case, the judge will not be permitted to consider evidence received by the judge who conducted the mediation. The mediator and any judge who conducted the mediation cannot be interrogated as witnesses concerning any information that came to their knowledge in the course of mediation.

There is no such prohibition in other dispute settlement procedures. In practice, the parties often refer to documents received from the other party during the pre-trial settlement stage (for example, defendant's letters on admission of a debt, deferment of obligations, and so on), and the courts accept these documents as evidence.

Other non-disclosure situations

Kazakhstan legislation protects commercial, banking, and tax secrets and other types of information. However, if a court decides that consideration of a case requires disclosure of documents containing such secrets, it can request disclosure of these documents and examine them in a court hearing, taking measures to ensure their protection (for example, by examining them behind closed doors).

Information containing advocates' secrets can only be presented to authorities combating the legalisation of proceeds of crime and terrorism financing, and only with respect to the advocate's actions intended to fulfil certain client's instructions (such as operations relating to money, securities, immovable property, the setting up and management of legal entities, and so on).

Personal correspondence and telephone conversations can only be disclosed and examined at an open court hearing with the consent of the interested persons. If these persons do not give their consent, their personal correspondence and telephone conversations may be examined behind closed doors. These rules also apply to the examination of evidence containing personal data.

Additionally, a person can refuse to submit documents or disclose any information incriminating himself or herself, his or her spouse or close relatives.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they only submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Witnesses normally give oral evidence. A court may ask a witness who gave oral evidence to submit such evidence in writing. **Kazakhstan** legislation does not specify the respective weight of oral and written evidence. A court considers all evidence in aggregate, and the importance of evidence cannot be established in advance.

Right to cross-examine

Once a witness has given evidence, the parties, judge and other participants to the proceedings can ask questions to the witness. Witnesses are normally interrogated during the trial. The first person to ask questions is the person who applied for summoning of the witness, followed by the other party. A judge can ask questions to a witness at any time during the interrogation.

Third party experts

19. What are the rules in relation to third-party experts?

Appointment procedure

Under the CPC, experts and specialists can provide opinions on specific and intricate issues.

An expert can be appointed by the court either on the court's initiative or on a party's application. An expert must hold a licence to carry out judicial and expert activities. The courts normally instruct experts from the Judicial Examination Centre, a state expert organisation that comprises experts experienced in different fields.

A person can be appointed as a specialist if he or she possesses the required knowledge. No licence is required for a specialist. A court can appoint specialists on its own initiative or on the parties' application. A party to a dispute can also appoint a specialist independently for advice on certain issues (including before judicial proceedings), submit the specialist's opinion to court and apply for the specialist to be interrogated in court.

If a court appoints an expert or a specialist, each party can submit its own questions to the expert or specialist. A court can accept the questions or reject them in a substantiated ruling.

Kazakhstan legislation does not require experts or specialists to disclose a draft expert report or specialist opinion.

Role of experts

Experts and specialists must submit independent opinions. The expert report must always be submitted in writing, while a specialist can answer questions orally at a hearing.

Experts and specialists must not represent the parties. **Kazakhstan** legislation expressly provides that experts and specialists must be persons who are not interested in the case outcome. An expert cannot communicate with participants to the proceedings outside of court on issues relating to the expert examination. Documents required for the expert examination are transferred to the expert through the court only.

Right of reply

The court and the parties can ask questions to experts and specialists during the proceedings. An expert can be interrogated after disclosure of the expert's report if any of the following applies:

- The report is not clear.
- There are certain gaps that do not require additional investigation.
- It is necessary to clarify the methods and terms used by the expert.

The expert is first interrogated by the party who applied for the appointment. If the expert was appointed on the parties' agreement or on the court's initiative, the first person to ask questions is the claimant, followed by the defendant. A court can ask questions to an expert at any time during the interrogation.

Fees

The expert's fees are paid by the party who applied for expert examination. If the expert was appointed on the court's initiative or on the application of both parties, the parties must pay the expert's fees on an equal basis. When issuing the judgment, the court will collect expert-related expenses incurred by the prevailing party from the defeated party.

Appeals

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

First instance judgments can be appealed before the courts of appeal. For most commercial disputes, the competent courts of appeal are oblast courts, the Nur-Sultan City Court or the Almaty City Court (*see Question 3*). Appeals against judgments of the courts of appeal are made to the Supreme Court of the Republic of **Kazakhstan**. However, the ability to appeal to the Supreme Court depends on the amount of claim. Where the dispute is not an investment dispute, a legal entity can only appeal a judgment to the Supreme Court if the amount of the claim is USD206,840 or more (as of 1 January 2020).

Appeals against court judgments relating to investment disputes are considered by the Specialised Judicial Board of the Supreme Court, and cassation appeals are considered by the Cassation Board of the same court.

Appellants do not need permission in order to file an appeal.

Grounds for appeal

The grounds for reconsideration of judicial acts differ depending on the level of appeal.

A court of appeal can reconsider a judgment if a lower court made either an error of law or an error of fact. The grounds for revocation or amendment of the first instance judgment are as follows:

- Violation or misapplication of substantive or procedural law.

- Incorrect identification and clarification of circumstances that are of importance to the case.
- Failure to prove circumstances that are of importance to the case.
- Inconsistency between the court conclusions and the circumstances of the case.

The Supreme Court can only revoke or amend judicial acts where the lower courts committed material violations of substantive and procedural law that contributed to the issuance of an illegal judgment. There are also special grounds on which the Supreme Court can reconsider a case, for example where:

- The appealed judgment violates the rights of an indefinite range of persons or any public interests.
- The appealed judgment is inconsistent with the interpretation and application of the rules of law by courts.

The Chairman of the Supreme Court or the Prosecutor General can request reconsideration of judgments on these special grounds either on their own initiative or based on a party's application.

Time limit

In most cases, the time limits for bringing an appeal are as follows:

- Judgment of the first instance court: one month from the date of issuance of the judgment in its final form (which is normally the day of publication of the judgment on the court's website: http://office.sud.kz). If the appellant did not participate in the proceedings, the time limit for bringing an appeal starts running from the date that person was sent a copy of the judgment.
- Judgment of the court of appeal: six months from the date of announcement of the judgment.

Class actions

21. Are there any mechanisms available for collective redress or class actions?

A claim can be filed jointly by several claimants against one or several defendants (*Article 49, CPC*). This mechanism, which is similar to class actions, mostly applies to labour and consumer protection disputes, and is not used in practice in commercial disputes.

Costs

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Litigation costs include:

- State duty.
- Other costs relating to judicial proceedings, including legal fees, witness expenses, fees of experts, specialists and interpreters, postal expenses, travel expenses, and so on.

The court collects litigation costs incurred by the successful party from the unsuccessful party. If only part of the claim is successful, costs are apportioned between the claimant and the defendant.

Regardless of the outcome of the case, a court can order all litigation costs to be paid by a party who failed to submit evidence within the timeline established by the court or who violated any pre-trial settlement procedure set out in the legislation or a contract.

To encourage the amicable settlement of disputes, **Kazakhstan** legislation provides for repayment of any paid state duty to a claimant as follows:

- In full if the parties enter into an amicable or mediation agreement during first instance or appellate proceedings.
- 50% of the paid duty if a dispute is settled during cassation proceedings.

Other litigation costs are allocated between the parties in accordance with the terms of the amicable or mediation agreement. Litigation costs are deemed to have been mutually repaid in the event of the parties' failure to establish such conditions.

The amount of legal fees awarded to a successful party must not exceed:

- 10% of the satisfied part of a pecuniary claim.
- USD2,068 for non-property claims (as at 1 January 2020).

(*Article 113, CPC.*)

Further, the judge can reduce the amount of the legal fees awarded if it considers that they are unreasonably high. The court has discretion to decide on this issue based on the principles of good faith and reasonableness.

23. Is interest awarded on costs? If yes, how is it calculated?

If requested by the judgment creditor, the court can award interest on the judgment amounts (*Article 239, CPC*). The law does not provide whether this only applies to the claimed amount. Therefore, the authors believe that interest can also be awarded on costs.

Interest is calculated from the date a judgment enters into force until the date of actual payment by the debtor. The interest rate is based on the refinancing rate of the National Bank of **Kazakhstan** at the date of enforcement of the judgment. The current refinancing rate is 9.25% per annum (at 1 January 2020).

Enforcement of a local judgment

24. What are the procedures to enforce a judgment given by the courts in your jurisdiction in the local courts?

Court judgments are enforced in **Kazakhstan** by public and private court enforcement officers. Private court enforcement officers enforce most enforcement documents, except those within the competence of public court enforcement officers. Public court enforcement officers are responsible for the enforcement of judicial documents relating to:

- Collection of a judgment debt from the state.
- Collection of a judgment debt from a legal entity in which the state or its affiliates own 50% of the shares or participatory interests or more.
- Collection of a judgment debt from natural monopolies or entities occupying a dominant position on a market for goods and services.
- Collection of a judgment debt in favour of the state, if the collected amount exceeds about USD6,895 (as at 1 January 2020).
- Confiscation of property or transfer of property to the state.
- Eviction, moving in, demolition, taking of land plots and other categories of cases in favour of the state.

The judgment creditor can submit a request for enforcement within three years from the day following the judgment's entry into legal force. During enforcement proceedings, the enforcement officer attaches the debtor's property or takes other measures required to ensure enforcement. If a judgment relates to the collection of money, the court enforcement officer will send a collection order to the debtor's bank. If there is no (or not enough) money on the debtor's account(s), the court enforcement officer will take other measures for repayment of the debt (for example, selling the debtor's property at an auction).

Cross-border litigation

25. Do local courts respect the choice of governing law in a contract? If yes, are there any national laws or rules that may modify or restrict the application of the law chosen by the parties in their contract? What are the rules for determining what law will apply to non-contractual claims?

Contractual choice of law

Generally, **Kazakhstan** courts respect the choice of governing law in a contract, provided that the choice does not violate any mandatory requirements of **Kazakhstan** law.

The **Kazakhstan** conflict of law rules allow a choice of foreign law in contracts with a foreign element (that is, when either party is a foreign national or there is another connection to a foreign jurisdiction). Therefore, contracts between **Kazakhstan** residents must be governed by local laws. Additionally, transactions related to immovable property located in **Kazakhstan** or a **Kazakhstan** legal entity must be governed by **Kazakhstan** law. The local courts can apply **Kazakhstan** law to these transactions regardless of the parties' choice of law.

Where the parties have agreed that **Kazakhstan** law will govern their contract, the local courts are not required to refer to any other law (for example, a law with which the contract has a close connection) and generally limit themselves to the application of **Kazakhstan** law.

There are no international instruments or conventions which affect the court's approach to the question of the law applicable to the claim. When determining the applicable law, the court will refer to the governing law clause in the parties' contract or, if the parties did not agree to an governing law, to the conflict of law rules under the Civil Code.

No choice of law and non-contractual claims

Kazakhstan law provides for certain rules as to how to determine applicable law to a contract in case there is no choice of law stipulated in the agreement. According to Article 1113 of the Civil Code, the applicable law is determined based on a country of residence of the party to the contract, specifically of a:

- Seller in a sale purchase agreement.
- Lessor in lease agreement.
- Contractor in a construction contract.
- Creditor in a loan agreement.

If the subject of an agreement is immovable property, or is a property trust management agreement, it must be governed by the laws of the country where such property is located. If the property is recorded in a state register in **Kazakhstan**, the agreement will be subject to the laws of **Kazakhstan**.

In the event that it is not possible to determine the governing law according to the above rules, the agreement will be deemed to be governed by the laws of the country where the party carried out the performance of crucial importance for the content of the agreement. If it is not possible to determine the performance of crucial importance for the content of the agreement, the laws of the country to which the agreement relates the most will apply.

There are no international instruments or conventions which affect the court's approach to the question of the law applicable to a contract. In such case, the court will refer to Article 1113 of the Civil Code, as described above.

For non-contractual claims, **Kazakhstan** law provides for a conflict of law rule, pursuant to which the governing law is determined based on the place where an action that forms the basis for the non-contractual claim was committed (*lex loci actus*).

26.Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Generally, **Kazakhstan** courts respect the choice of jurisdiction in a contract, provided that the choice does not violate any mandatory requirements of **Kazakhstan** law. **Kazakhstan** law allows parties to choose a foreign jurisdiction if one of the parties is a foreign entity or individual. In this case, **Kazakhstan** courts will direct the parties to the competent foreign court on the defendant's request.

Local courts have exclusive jurisdiction over certain disputes, in particular:

- Disputes related to rights over land plots, buildings, premises and other immovable property located in **Kazakhstan**, including claims to remove arrests from such property.
- Disputes related to inheritance.
- Disputes arising out of carriage contracts if the carrier is a **Kazakhstan** entity.
- Disputes related to marriage dissolution if both parties live in **Kazakhstan**.
- Special proceedings claims (for example, aimed at establishing legal facts, challenging actions of officials, and so on).

Local courts can accept claims and initiate court proceedings involving foreign nationals if either:

- There is a relevant jurisdiction agreement between the parties.
- A foreign person submits a claim against a **Kazakhstan** resident (or a respondent who has property in **Kazakhstan** or is otherwise closely connected with **Kazakhstan**).

Kazakhstan courts must reject a claim and terminate proceedings if both:

- The same proceedings are pending in a foreign court (or the same claim has been resolved by a foreign court).
- The judgments of the foreign court are recognised and enforced in **Kazakhstan** under international treaties or **Kazakhstan** law.

This does not apply where the courts have exclusive jurisdiction (*see above*).

There are no international instruments or conventions which affect the court's approach to the question of court's jurisdiction over a dispute. When determining the jurisdiction, the court will refer to the jurisdiction clause in the parties' contract or to the above-mentioned rules.

27. If a party wishes to serve foreign proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction a party to any international agreements affecting this process?

Kazakhstan is a party to the HCCH Convention on Civil Procedure 1954 and HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention).

Under Article 5 of the Hague Service Convention, service is effected through the Department for the Provision of Courts' Activities of the Supreme Court. All requests for service of documents must be drafted in Kazakh and/or Russian or accompanied by a translation into these languages.

Article 10 of the Hague Service Convention applies in **Kazakhstan**. Therefore, service can be effected by post and private or personal modes of service.

Kazakhstan is also a party to a number of international treaties with countries of the Commonwealth of Independent States (CIS) that authorise direct contact between judicial authorities.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Kazakhstan is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970, subject to the following reservations:

- The taking of evidence under Article 15 of the Convention is allowed if the permission of the competent authority (that is, the Department for the Provision of Courts' Activities of the Supreme Court) is given.

- The taking of evidence under Articles 16 and 17 of the Convention is allowed without permission of the competent authority.
- The competent authority can provide assistance to obtain evidence by compulsion under Article 18 of the Convention, if such assistance is provided for under **Kazakhstan** legislation.
- In accordance with Article 23 of the Convention, **Kazakhstan** will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents as known in common law countries.
- Subject to **Kazakhstan** legislation, the actions and use of other methods of taking evidence under Article 27(b) and (c) are permitted.
- Letters of request must be in English and accompanied by a certified translation into Kazakh and/or Russian.

The Department for the Provision of Courts' Activities of the Supreme Court is appointed as a central authority for the receipt of letters of requests under Article 2 of the Convention and as a competent authority under Article 15 of the Convention.

Kazakhstan is also a party to a number of international treaties with CIS countries that authorise direct contact between judicial authorities.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in your jurisdiction?

Kazakhstan courts recognise and enforce judicial acts of foreign states on the basis of either:

- Legislation and/or international treaties ratified by **Kazakhstan**.
- Reciprocity.

(*Article 501, paragraph 1, CPC.*)

"Judicial acts" include all acts resolving a filed claim on the merits (that is, decisions or judgments, resolutions, rulings approving amicable agreements, and court orders).

Kazakhstan has entered into a very limited number of international treaties for the mutual recognition and enforcement of judgments. Most of these treaties are with the post-Soviet countries. **Kazakhstan** is also party to treaties on legal assistance in civil matters with Turkey, China, Vietnam, India, Pakistan, Mongolia, the United Arab Emirates and the Democratic People's Republic of Korea.

The CPC only allows for the recognition and enforcement of foreign judgments on the basis of reciprocity if there is an established enforcement mechanism under **Kazakhstan** law. **Kazakhstan** legislation does not currently

provide for such a legal mechanism. There are instances when the **Kazakhstan** courts have recognised and enforced judgments of English courts. However, there are no settled legal grounds for this.

Alternative dispute resolution

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

Kazakhstan law provides for the following ADR methods:

- Arbitration.
- Mediation.
- Participatory procedure (that is, negotiations involving attorneys).

Mediation and the participatory procedure are not widely used in practice. A settlement agreement reached as a result of mediation or participatory proceedings is subject to approval by a **Kazakhstan** court.

Commercial arbitration can be either institutional or ad hoc arbitration. Certain requirements apply to arbitrators and arbitration proceedings under **Kazakhstan** law. Arbitration agreements between **Kazakhstan** residents and governmental authorities or agencies or state-owned companies can be concluded with the consent of an authorised agency (which depends on the specific governmental authority or agency or state-owned company that is entering into the arbitration agreement). Arbitral awards are subject to enforcement by **Kazakhstan** courts.

In rare cases, adjudication is used for disputes arising under FIDIC contracts (that is, standard form contracts developed by the International Federation of Consulting Engineers). This method is not provided for by **Kazakhstan** law. A dispute adjudication board's decision is enforced through arbitration as provided in FIDIC contracts.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

Kazakhstan law provides that a dispute can be resolved through mediation, the participatory procedure or arbitration under the parties' written agreement. Courts cannot compel the use of ADR methods, but strongly recommend their use.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

There are no prescribed rules on the provision of evidence in mediation, arbitration and the participatory procedure. This issue is determined by the parties' agreement or relevant arbitration rules.

Mediation and arbitration are confidential in **Kazakhstan**. **Kazakhstan** law does not provide for the confidentiality of the participatory procedure.

The parties to mediation cannot disclose any information obtained during mediation without the written permission of the party that provided the information and documents. Unauthorised disclosure can lead to administrative liability in the form of a fine. A mediator cannot be examined as a witness in court, except in cases envisaged by law.

In arbitration, the parties and arbitrators are not allowed to disclose any information without permission of the disclosing party. However, violation of this rule is not subject to any liability or penalty.

33. How are costs dealt with in ADR?

Arbitration costs are allocated in accordance with the parties' agreement. In the absence of an agreement, the arbitral tribunal allocates costs proportionally to the satisfied and rejected claims.

Mediation costs are allocated in equal proportion, unless otherwise specified in the parties' agreement.

There are no rules on the allocation of costs in the participatory procedure.

34. What are the main bodies that offer ADR services in your jurisdiction?

The most respected arbitration institutions in **Kazakhstan** are the:

- **Kazakhstan** International Arbitration Centre (*www.arbitrage.kz*, *info@arbitrage.kz*), which is headed by M Suleimenov, a famous professor and doctor of law.

- International Arbitration Centre "IUS" (*www.iusea.com*, *ius-kz@inbox.ru*), which was founded in 1992 and is operated by the Public Foundation "Juridical Centre IUS" (Almaty, **Kazakhstan**).
- The Arbitration Center Atameken of the National Chamber of Entrepreneurs (*www.aca.kz*, *Arbitration@atameken.kz*).

In **Kazakhstan**, mediation services are provided by independent individuals. The list of mediators is available at: *http://mediator-reestr.kz*.

Proposals for reform

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

The new Law on Advocacy and Legal Assistance was adopted on 5 July 2018. According to the Law, starting from 2020, legal advisers will need to take out professional liability insurance.

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Areas of practice. Dispute resolution; arbitration; IP.

Recent experience

- Representing a foreign company in court in connection with a number of disputes relating to debt recovery to the total amount of more than USD16 million.
- Representing Russian VTB Bank on a complicated ongoing cross-border litigation arising out of a claim to terminate a bank counter-guarantee issued for the amount of USD30 million.

- Acting for a number of foreign companies before local arbitration tribunals over disputes involving debt recovery and in court over cases for the enforcement of foreign judgments and awards.
- Acting for a Switzerland pharmaceutical company in court and enforcement proceedings in relation to a dispute concerning a USD1 million debt recovery.
- Acting for a large Russian manufacturer of polyurethane products in court in relation to a dispute involving bankruptcy of a local company.
- Advising local and foreign companies on various matters related to judicial process, civil procedure, international commercial arbitration, enforcement of Kazakh and foreign judgments and application of the limitation periods.

Languages. Russian, English, Kazakh

Publications

- *Recognition and Enforcement of Foreign Judgments and Commercial Arbitration Awards in* ***Kazakhstan****: Issues and Practical Recommendations, Legal 500, 2015* (in English).
- *International Arbitration 2016,* ***Kazakhstan****, Chambers Country Practice Guide 2015* (co-authored with Shaikenov V, Chentsova O) (in English).
- *Will the judicial process become simpler?, Expert* ***Kazakhstan****. No. 46, 2015* (in Russian).
- *Recovery: Tenge or Foreign Currency, Journal Forbes* ***Kazakhstan****, April 2017* (in Russian).

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Areas of practice. Dispute resolution; arbitration; ADR.

Recent experience

- Represented a large Italian contractor in SCC arbitration proceedings against the Republic of **Kazakhstan** (employer) in relation to a contract for a road reconstruction project financed by the EBRD. The contract was based on the FIDIC Red Book Conditions.
- Representing a **Kazakhstan** bank in a London-seated commercial arbitration under the UNCITRAL rules in a professional negligence dispute with the bank's former consultants, which

arose under Kazakh, English and US laws, and is based on allegedly futile promises given by the consultants.

- Ongoing advice to a global multidisciplinary management, engineering and development consultancy on a series of disputable matters related to construction under a FIDIC-based contract (Yellow Book) for a major mixed-use development located in Astana, **Kazakhstan**.
- Representing the local subsidiary of a major Indian company performing design and construction operations (as a subcontractor under the contract with Agip **Kazakhstan** North Caspian Operating Company N.V.) in several litigations over different contracts related to the construction (including design and procurement) of an oil export pipeline in the framework of the Kashagan field pilot development programme. AEQUITAS also represented the client in a dispute over the validity of an LCIA arbitration clause commenced by the opposite side (2012-2018).
- Represented a large UK sugar and coffee trader in connection with the enforcement of a foreign arbitral award, including injunctive measures taken in **Kazakhstan** to secure the arbitration claims.
- Representing a major Romanian grain trader before Kazakh courts requesting the enforcement of a foreign arbitral award rendered under GAFTA Rules.
- Advised a large international architecture company on a dispute arising out of the performance of contractual obligations related to the construction of facilities in the Burabay resort zone.

Languages. Russian, English, Kazakh

Publications

- Shaikenov V, Idayatova A, *Issues of Construction Guarantee Period Regulation under Kazakh Civil Legislation, The Legal 500, June 2016* (*www.legal500.com/c/**kazakhstan**/developments/32172*).
- Shaikenov V, Idayatova A, *Enforcement in **Kazakhstan** of interim measures taken by Russian courts: reconsideration of Minsk Convention and Kiev Agreement, Legal Insight. No. 9 (55) 2016.*
- Shaikenov V, Idayatova A, *The problem of choosing the law applicable to arbitration proceedings and arbitration agreement from the Kazakh legislation perspective* (*www.zakon.kz/4851952-problema-vybora-primenimogo-k.html*).

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